

poly(hydroxy valeric acid), poly(hydroxybutyrate-co-valerate) and poly(hydroxy alkanoates).

99. A product as set forth in claim 98 further including a plasticizer selected from the group consisting of glyceryl triacetate, triethyl citrate, acetyl triethyl citrate, tributyl citrate, acetyl tributyl citrate, diethyl phthalate, glyceryl tribenzoate, N-ethyl-o,p-toluene sulfonamide, dimethyl sebacate, dibutyl sebacate, pentaerythritol tetraacetate, pentaerythritol tetrabenzoate, and diethyl succinate.--

REMARKS

Applicants have canceled all pending claims 41-48 and 50-85 and added claims 86-99. Applicants hereby request that an interference be declared between the subject application as amended and Bloembergen, U.S. Patent No. 5,462,983, a copy of which is enclosed herewith.

It is respectfully noted that the Bloembergen patent was examined in Art Unit 1512 by Primary Examiner Patricia A. Short. MPEP §2301.01(a) suggests transfer may be appropriate.

Compliance With 37 CFR §1.607(a)

(a) Identification of the Patent

Applicants have presented claims 86-99 to request that an interference be declared in accordance with 37 CFR §1.607

between applicant's above-identified application and Bloembergen, U.S. Patent No. 5,462,983 (hereinafter "the '983 patent"), issued October 31, 1995. Applicants have in their claims 86-97 substantially copied the '983 patent claims 1-11 and 13, respectively. Applicants' claims 98 and 99 are also directed to the same invention.

Applicants previously submitted an amendment herein dated October 29, 1996 copying all claims 1, 8, 11 and 13 of the '983 patent, plus additional claims to the same invention, thereby fully complying with the requirements of 35 USC §135(b) in claiming the same subject matter directed to the same invention as that claimed in the '983 patent prior to October 31, 1996, the one-year period from the date the '983 patent was granted.

(b) Presentation of a Proposed Count

Applicants present in Appendix A attached hereto the "Proposed Count" for the requested interference which is substantially the same as the '983 patent broadest claim, claim 8, and is inclusive of the subject matter of applicants present claims. Thus, the proposed count has a claim scope inclusive of the probable best proofs of both parties.

In compliance with 37 CFR §1.606, proposed Count 1 is clearly broader than the broadest claim (claim 8) of the '983 patent. The proposed count covers the invention in sufficiently

broad terms and is a suitable vehicle for declaring the requested interference.

(c) Identification of Claims Corresponding to the Count

Applicants identify '983 claims 1-13 and applicants' claims 86-99 as corresponding to the proposed count and as being directed to the same invention.

(d) Application of the Terms of Applicant's Disclosure to the Copied Claims

In attached Appendix B, applicants illustrate the representative support in the disclosure of applicants' present application for the limitations of their newly presented claims 86-99. There is, of course, additional support in applicants' application omitted for the sake of brevity.

(e) Applicant's Effective Filing Date

As pointed out above, applicants' present claims 86-99 are supported by the present application which is a duplicate of the specification of applicants' Serial No. 07/995,237, filed 12/22/92, which is, in turn, a continuation-in-part of their application Serial No. 07/957,924, filed 10/7/92. Applicants are clearly entitled to their 12/22/92 filing date.

In Appendix C hereof, applicants point out the representative support for support in their earliest-filed 10/7/92 application for species within the scope of the suggested proposed count. It should be noted that to obtain priority benefit of a parent application for the purposes of an

interference, applicants need only show support for a species within the count to be a constructive reduction to practice as of the date of the parent application. See *Mori v. Costain*, 214 USPQ 295 (Bd. Pat. Int. 1981). Thus, applicants are also entitled to priority benefit of their Serial No. 07/057,924, filed 10/7/92.

(f) The '983 Patent Effective Filing Date

The '983 patent stems from U.S. Serial No. 08/097,563, filed 7/27/93. There is no claim for benefit of any earlier filing date.

Compliance With 37 CFR §1.608

Since applicants have the earlier effective filing date for the invention of the proposed count, there is no requirement for them to establish a *prima facie* case of earlier priority under §1.608.

The Requested Interference Should Be Declared

Applicants respectfully request that the proposed interference be promptly declared. MPEP §2307 states as follows:

Examiners should note that 37 CFR 1.607 requires that examination of an application in which applicant seeks an interference with a patent "shall be conducted with special dispatch." See MPEP §708.01 (emphasis added herein).

Applicants wish to point out that in the efforts to provoke the interference, the claims of the '983 patent were substantially copied. Thus, most claim limitations are those

that were examined and approved by the Examiner who allowed the '983 patent. Should the present examination involve rejections of applicants' claims that would have been equally applicable against the '983 claims, applicants respectfully note MPEP §2307.02, which requires the approval of the Group Director for such a rejection.

It is possible that during the examination that the Examiner may find some, but not all, of applicants' claims to be allowable to applicants. In that event, the MPEP §2309.02 provides that the application should be sent to the Board for declaration of the interference, stating: "At least one claim corresponding to the count must be allowable." Claims "not allowable" are merely designated on form PTO-850 as such.

Applicants are presumptively the prior inventors of the claimed subject matter and only desire an interference to prove that they are the actual prior inventors. Their opportunity to do so should not be unduly delayed.

PATENT

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Please contact applicants' attorney if he can be of assistance in expediting this request.

Respectfully submitted,


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